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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,101	02/15/2002	Eric Herbert Hinton	PC-4187/USA	1532
26282	7590	05/16/2005	EXAMINER	
INCO PATENTS & LICENSING PARK 80 WEST - PLAZA TWO SADDLE BROOK, NJ 07663			CHOOBIN, BARRY	
			ART UNIT	PAPER NUMBER
			2625	

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/077,101

Applicant(s)

HINTON ET AL.

Examiner

Barry Choobin

Art Unit

2625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6, 14, 15, 20 and 28 is/are rejected.
- 7) ☒ Claim(s) 2-5, 7-13, 16-19 and 21-27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/18/03;215/02
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 12/18/2003 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.
2. The information disclosure statement (IDS) submitted on 2/15/2002 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 6, 14, 15, 20 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Nyberg et al (ESTIMATION OF THE SIZE DISTRIBUTION OF FRAGMENTED ROCK IN ORE MINING THROUGH AUTOMATIC IMAGE PROCESSING; Applicant's admitted prior art.)

As to claims 1 and 15, Nyberg et al discloses a system for performing fragmentation analysis (page 293, the first paragraph, the first sentence; Diagram 2 3; page 293, Section 2 (statement of the problem), the system comprising; a camera configured for capturing a plurality of images of fragmented

Art Unit: 2625

Particles (page 293, the first paragraph, the second sentence; page 294, section 3) wherein the plurality of images include at least two images for each group of Fragmented particles (page 293, the first paragraph, the fourth sentence; page 298, section '8'); and at least one processor (page 293, the first paragraph, the second Sentence) for executing programmable instructions for generating at least one of a fragmentation distribution of the fragmented particles corresponding to at least one of the plurality of images (page 298, section 8, the second and third sentences; Diagram 1,2,3), and a total fragmentation distribution of the fragmented particles corresponding to two or more of the plurality of images (page 293, the first paragraph; Diagram 2,3; page 298, section "8.Results").

As to claims 6 and 20, Nyberg et al disclose the system according to claim 1 (see claim 1 above), wherein each of the plurality of images is a top view image of the fragmented particles. (Page 302, picture 1)

As to claims 14 and 28, Nyberg et al disclose the system according to claim 1 (see claim 1 above), Wherein the fragmentation distributions are volume distributions of the fragmented particles (page 293, first paragraph, the sentence; page 297-298, section 7, "7.steometric consideration; Figs. 6 and 7).

***Allowable Subject Matter***

5. Claims 2-5, 7-13, 16-19, 21-27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***CONTACT INFORMATION***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry Choobin whose telephone number is 571-272-7447. The examiner can normally be reached on M-F 7:30 AM to 18:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on 571-272-7453. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Barry Choobin  
April 15, 2005

